

5.17 Tribal Cultural Resources

This section describes the environmental and regulatory setting and discusses impacts associated with the construction and operation of the proposed project with respect to tribal cultural resources. Appendix H includes CPUC correspondence with the Native American Heritage Commission (NAHC) and Native American tribes within the vicinity of the proposed project alignment. Section 5.5, “Cultural Resources” provides a discussion of historical resources, unique archaeological resources, and paleontological resources.

Information presented in this section was compiled from the following sources:

- *Cultural Resources Survey Report for the Proposed San Diego Gas & Electric TL674A Reconfiguration & TL666D Removal Project*. (AECOM, 2017);
- SDG&E’s Proponent’s Environmental Assessment (SDG&E 2017) and subsequent submittals for the proposed project; and
- The results of the CPUC’s consultation with California Native American tribes pursuant to Assembly Bill (AB) 52 regulations.

The CPUC’s qualified consultant reviewed these documents, other submitted information, and the results of CPUC’s AB 52 consultation with California Native American tribes for the proposed project in preparing this analysis.

5.17.1 Environmental Setting

Ethnographic Cultural Setting

As noted in the Cultural Resources Technical Report (CTR) (Appendix D), the proposed project would be situated within the traditional territory of the prehistoric Yuman people (Foglia, Cooley, and Mello 2017). The Yuman people were described by the Spaniards as the Diegueño, which is a term that originates from the Mission San Diego de Alcalá and was adopted by early anthropologists; researchers today have designated the Kumeyaay living north of the San Diego River as ‘Iipai’ (Northern Diegueño), and those living south of the river and into Baja California as Tipai (Southern Diegueño). “Kumeyaay,” which is a Yuman term, also describes the people who were present at the time of European contact (Foglia, Cooley, and Mello 2017).

The Kumeyaay territory was bordered by the San Luis Rey River to the north, Baja California to the south, the Pacific Ocean to the west, and the Imperial Valley to the east. The southern boundary between the territories of the Shoshonean Luiseño/Juaneño and the Northern Diegueño, or ‘Iipai Kumeyaay, extended from the coast eastward along Agua Hedionda Creek to the northern tip of the valley between the San José and Palomar mountains (Foglia, Cooley, and Mello 2017). These areas are located in portions of modern-day San Diego County and include areas within the vicinity of the proposed project.

Tribal Cultural Resources

Tribal cultural resources (TCRs) are sites, features, places, cultural landscapes, sacred places, or objects that are of cultural value to a California Native American Tribe. They are either included or determined to

be eligible for inclusion in the California Register of Historic Resources or included in a local register. They also can be resources that the lead agency, at its discretion, chooses to treat as a TCR (Public Resource code [PRC] section 21074).

Additionally, a cultural landscape is a TCR to the extent that the landscape is geographically defined in terms of the size and scope of the landscape (PRC section 21074(b)). Additionally, TCRs may be historical resources (PRC section 21084.1), unique archaeological resources (PRC section 21083.2(g)), or non-unique archaeological resources (PRC sections 21083.2 (h) and 21084(c)).

California Native American Heritage Commission Consultation

The California Public Utilities Commission (CPUC) requested a search of the Sacred Lands Inventory and a Tribal Consultation List from the Native American Heritage Commission (NAHC) on January 16, 2018. The NAHC provided a response on January 17, 2018. The response indicated that no results were found in the Sacred Lands File. However, the information also indicates that this does not preclude the presence of Native American cultural resources. Twenty tribes in the San Diego region were noted as potentially having an interest in the proposed project. The tribes noted within the NAHC response are shown as being associated with the Kumeyaay (Appendix H).

AB 52 Tribal Consultation

The CPUC previously has received notifications from three California Native American tribes for projects located within San Diego County and for all CPUC projects. In response to these notifications, the CPUC mailed letters (via certified mail) and provided duplicate materials via email to the following three tribes on January 16, 2018: the San Luis Rey Band of Mission Indians (Luiseño), the Pala Band of Mission Indians (Luiseño), and the Sycuan Band of the Kumeyaay Nation. A response was received from the Pala Band of Mission Indians on January 18, 2018, indicating that the proposed project was not located in their traditional use area. A fourth letter was mailed on January 18, 2018, in response to a request from the Santa Ysabel Band of the Iipay Nation (Kumeyaay) to be notified of CPUC projects and dated January 9, 2018. The request noted that information should be provided for all projects located in San Diego County (among others). A response was received from the Santa Ysabel Band of the Iipay Nation on February 2, 2018 requesting additional consultation. The CPUC responded on February 15, 2018 noting their availability for a conference call (Appendix H).

5.17.2 Regulatory Setting

Federal

No federal regulations related to TCRs are applicable to the proposed project.

State

Assembly Bill 52

Assembly Bill (AB) 52 amends CEQA by creating a new category of cultural resources, tribal cultural resources, and new requirements for consultation with Native American tribes. AB 52 specifies that a project that may cause a substantial adverse change to a tribal cultural resource is a project that may have a significant effect on the environment. The bill defines “tribal cultural resources” as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe and that are either listed in the CRHR or eligible for inclusion in the CRHR. A lead agency, at its

discretion and supported by substantial evidence, may choose to treat a resource as a tribal cultural resource. AB 52 requires early notice and consultation with California Native American tribes on the NAHC list, if requested by a tribe. Lead agencies will be required to offer Native American tribes the opportunity to consult on CEQA documents if the tribes have an interest in tribal cultural resources located within their jurisdiction. The new procedures under AB 52 offer the tribes an opportunity to take an active role in the CEQA process to protect tribal cultural resources. If the tribe requests consultation within 30 days upon receipt of the notice, the lead agency must consult the tribe. AB 52 went into effect on July 1, 2015. In November 2015, the Governor's Office of Planning and Research (OPR) requested public input on the draft CEQA guidelines that were revised to include tribal cultural resources. The OPR approved revised CEQA Guidelines incorporating AB 52 requirements on September 27, 2016.

AB 52 was codified in Sections 5097.94, 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 of the PRC. The provisions under these sections govern the consultation procedures with Native American tribes with respect to tribal cultural resources and the inclusion of mitigation or avoidance measures in environmental documents. The provisions under these sections also address the exchange of confidential information obtained from a California Native American tribe and define what a California Native American tribe means in the context of the consultation process.

Additional State Laws Regarding Archaeological and Native American Cultural Resources.

California law extends additional protections to Native American cultural resources (not limited to TCRs):

- PRC sections 5097.91 through 5097.991 pertain to the establishment and authority of the NAHC. These sections also prohibit the acquisition or possession of Native American artifacts or human remains taken from a Native American grave or cairn, except in accordance with an agreement reached with the NAHC, and provide for Native American remains and associated grave artifacts to be repatriated.
- PRC subsections 5097.98(b) and (e) require a landowner on whose property Native American human remains are found to limit further development activity in the vicinity until conferring with the most likely descendants (as identified by the NAHC) to consider treatment options.
- Health and Safety Code sections 7050 through 7054 make the disturbance and removal of human remains felony offenses because of the importance of human remains to the Native American community.
- PRC section 65092 provides for the notification of California Native American tribes who are on the contact list maintained by the NAHC about construction projects.
- PRC sections 5097.993 through 5097.994 make it a misdemeanor crime to perform unlawful and malicious excavation, removal, or destruction of Native American archaeological or historical sites on public or private lands.
- Penal Code section 622 establishes as a misdemeanor the willful injury, disfiguration, defacement, or destruction of any object or thing of archaeological or historical interest or value, whether situated on private or public lands.

- PRC section 6254(r) protects Native American graves, cemeteries, and sacred places maintained by the NAHC by protecting records of such resources from public disclosure under the California Public Records Act.

Local

No local regulations related to TCRs are applicable to the proposed project.

5.17.3 Environmental Impacts and Assessment

The impact analysis below identifies and describes the proposed project's potential impacts on TCRs within the project area. Potential impacts were evaluated according to the significance criteria presented in Appendix G of the California Environmental Quality Act (CEQA) Guidelines and listed at the start of each impact analysis section below.

Applicant Proposed Measures

The applicant has not incorporated APMs to specifically minimize or avoid impacts on TCRs.

Significance Criteria

Table 5.17-1 includes the significance criteria from Appendix G of the CEQA Guidelines' tribal cultural resources section to evaluate the environmental impacts of the proposed project.

Table 5.17-1 Tribal Cultural Resources Checklist

Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

No tribal cultural resources were identified in the project study area to date. In the event that a tribal cultural resource were discovered in the project area, and the archaeological monitor or qualified Native American monitor determines that it is listed or eligible for listing in the CRHR, the resource would either be avoided, preserved in place, or handled as determined during tribal consultation. However, because no

tribal cultural resources were identified in the project study area, none are listed or eligible for listing in the CRHR. Therefore, no impact will result.

Significance: No Impact.

b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Based on the findings presented in Appendix D and the responses received to date from Native American representatives, no tribal cultural resources were identified in the project study area. As described in Appendix D, the applicant sent letters to 19 Native American representatives that may be knowledgeable about cultural resources within or near the project area. Copies of the applicant's letters are included in Appendix D. Responses received by the applicant to date include correspondence from the Inaja Band of Mission Indians, the Campo Band of Mission Indians, the Mesa Grande Band of Mission Indians, and the Kwaaymii Laguna Band of Mission Indians. With the exception of the response from Carmen Lucas of the Kwaaymii Laguna Band of Mission Indians, the responses received to date specified no issues or concerns with the proposed project. In a voice message dated October 21, 2016, Carmen Lucas stated that the project area is rich with cultural resources and that an archaeological monitor and qualified Native American monitor should be present during construction. The applicant has not established additional contact with the 15 remaining Native American representatives.

As previously noted, the CPUC has received two responses to date, one from the Pala Band of Mission Indians, indicating that the proposed project was not located in their traditional use area, and one from the Santa Ysabel Band of the Iipay Nation, requesting further consultation. No information regarding TCRs has been received to date (Appendix H).

Tribal consultation would continue throughout all phases of the proposed project, as deemed necessary. If any tribal cultural resources are identified in the project area, they would be either avoided, preserved in place, or handled as determined during consultation. As a result, any potential impacts would be less than significant.

Significance: Less than significant.

References

- Foglia, Shannon, Theodore G. Cooley, and Monica Mello. 2017. Cultural Resources Survey Report for the Proposed San Diego Gas & Electric Company TL674A Reconfiguration & TL666D Removal Project, San Diego County, California. Prepared for San Diego Gas & Electric Company. August.
- San Diego Gas & Electric (SDG&E). June 2017. Proponent's Environmental Assessment for the TL674A Reconfiguration & TL666D Removal Project.

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